

Table of Contents

	PAGE
EXECUTIVE SUMMARY Click Here To View	i
INTRODUCTION	1
SCOPE AND METHODOLOGY	2
FINDING I	
THE CITY NEEDS TO AMEND ITS CONTRACT WITH WMI FOR GARBAGE COLLECTION IN ORDER TO ELIMINATE ERRORS, AMBIGUITIES, AND NONCOMPLIANCE ISSUES	3
- The September 1985 Garbage Collection Agreement	4
◇ CERTAIN PROVISIONS OF THE 1985 GARBAGE COLLECTION AGREEMENT WERE NOT FOLLOWED.....	5
• <i>The Commercial Franchise Fee Rate Has Varied From 11.5 Percent To 21.63 Percent In Spite Of The Fact That The 1985 Agreement Specified 10.8 Percent With No Provision For Modification</i>	<i>7</i>
• <i>The City Did Not Bill WMI For About \$3.7 Million In Increased Costs For Landfill Capacity That The 1985 Agreement Specified The City Should Bill</i>	<i>9</i>
• <i>WMI's Statement Of The Computation Of Franchise Fees Accompanying Their Monthly Payments Of Franchise Fees Omitted A Required Certification As To Completeness And Accuracy</i>	<i>11</i>
◇ THE 1985 GARBAGE COLLECTION AGREEMENT IS INACCURATE, INCOMPLETE, AND SUBJECT TO MISINTERPRETATIONS	12
• <i>The 1985 Agreement And The First Amendment To The Agreement Contains Ambiguous Language Regarding Commercial Collection Rates</i>	<i>13</i>
• <i>The Formula For Contractor's Payment In The 1985 Agreement Was Unintelligible, But Changes To The Contractor's Payment Were Made Anyway</i>	<i>14</i>

<ul style="list-style-type: none"> • <i>The City Allowed WMI To Repurchase The Landfill Capacity It Lost Because Of The City's Recycling Programs Even Though The 1985 Agreement Did Not Provide For Such Repurchases</i> 	15
<ul style="list-style-type: none"> ◇ THERE IS A LACK OF ADMINISTRATIVE CONTROLS OVER THE WMI GARBAGE COLLECTION AGREEMENT 	16
<ul style="list-style-type: none"> <ul style="list-style-type: none"> • <i>Errors In The Rate Adjustment Process Were Not Corrected</i> 	17
<ul style="list-style-type: none"> <ul style="list-style-type: none"> • <i>No City Controls Exist To Ensure That WMI Bills Garbage Producers At The Same Rates The City Approved</i> 	19
<ul style="list-style-type: none"> <ul style="list-style-type: none"> • <i>The City Has Not Received Timely, Independent CPA Reports On WMI's Franchise Fees And Has Not Determined How To Use The Reports When It Does Receive Them</i> 	19
CONCLUSION	20
RECOMMENDATIONS	21
ADMINISTRATION'S RESPONSE	24
APPENDIX A	A-1
DEFINITIONS OF PRIORITY 1, 2, AND 3	
AUDIT RECOMMENDATIONS	A-1
APPENDIX B	B-1
MEMORANDUM FROM CITY ATTORNEY	
REGARDING COMMERCIAL FRANCHISE FEES	B-1

[Click Here To View](#)

[Click Here To View](#)

[Click Here To View](#)

INTRODUCTION

In accordance with the City Auditor's 1989-90 Audit Workplan, we reviewed certain aspects of the City of San José's agreement with Waste Management of California, Inc. for garbage collection. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

SCOPE AND METHODOLOGY

This report is the second of two reports covering the City's solid waste collection contracts with Waste Management of California, Inc. (WMI). The first report covered the recycling contract. This report concerns certain aspects of the garbage collection contract.

We limited our review to the City's controls over and compliance with the September 1985 Garbage Collection Agreement with WMI regarding garbage collection franchise fees, disposal (landfill) fees, and the October 1988 recycling rebates settlement between the City and WMI. Our methodology included reviewing: 1) applicable Municipal Code provisions, 2) the 1985 Garbage Collection Agreement provisions, 3) the April 1990 First Amendment to the Agreement, and 4) relevant City and WMI records. In addition, we interviewed City and WMI representatives. We also tested various samples drawn from the period of March 1986 (when operations started under the Agreement) through March 1990.

FINDING I

THE CITY NEEDS TO AMEND ITS CONTRACT WITH WMI FOR GARBAGE COLLECTION IN ORDER TO ELIMINATE ERRORS, AMBIGUITIES AND NONCOMPLIANCE ISSUES

In September 1985, the City of San José and Waste Management of California, Inc. (WMI) entered into a contract for the collection and transportation of garbage within the City. Our review of this contract revealed numerous errors, ambiguities, and noncompliances with actual practices regarding the establishment and collection of franchise fees. Accordingly, the City of San José and WMI need to amend their contract, and the City needs to implement additional administrative controls in order to prevent similar problems from occurring in the future.

We found that:

- ◇ Certain provisions of the 1985 Garbage Collection Agreement were not followed;
- ◇ The 1985 Garbage Collection Agreement is inaccurate, incomplete, and subject to misinterpretations; and
- ◇ There is a lack of administrative controls over the WMI Garbage Collection Agreement.

The September 1985 Garbage Collection Agreement

In September of 1985, the City of San José entered into an agreement with WMI granting them the exclusive license and privilege to engage in the business of collecting and transporting garbage (except cannery waste) within the City of San José. This Agreement was originally for six years and four months, from March 1, 1986 through June 30, 1992. In April 1990, the City and WMI entered into a First Amendment to the Agreement which extended the Agreement for one additional year to June 30, 1993. The Agreement between the City and WMI is quite long (80 pages plus exhibits) and covers numerous operational matters as well as payments that WMI is required to make to the City.

Under the Agreement, WMI bills garbage producers and collects monies from them. The City determines what the billing rates are to be and how much of the resulting cash receipts are to be remitted to the City as the franchise fee required under the Agreement. The following summary shows the franchise fees the City received for the periods indicated.

TABLE I
SUMMARY OF CITY OF SAN JOSÉ
GARBAGE COLLECTION FRANCHISE FEES
FROM MARCH 1986 THROUGH MARCH 1990

<u>Periods From March 1986 Through March 1990</u>	<u>Franchises Fees Received</u>
4 months ended June 30, 1986	\$949,025.63
12 months ended June 30, 1987	3,953,777.02
12 months ended June 30, 1988	4,728,758.92
12 months ended June 30, 1989	5,102,494.88
9 months ended March 31, 1990	<u>5,765,358.46</u>
TOTAL	<u>\$20,499,414.91</u>

Source: Finance Department records.

Various City organizations are responsible for implementing the Agreement between the City and WMI and overseeing the WMI operations. These City organizations include the Integrated Waste Management Program of the Office of Environmental Management, the Environmental Enforcement Division of the Neighborhood Preservation Department, and the Accounts Receivable Section of the Treasury Division of the Finance Department.

Our review of the 1985 Agreement between the City and WMI revealed that:

- ◇ Certain provisions of the 1985 Garbage Collection Agreement were not followed;
- ◇ The 1985 Garbage Collection Agreement is inaccurate, incomplete, and subject to misinterpretations; and
- ◇ There is a lack of administrative controls over the WMI Garbage Collection Agreement.

CERTAIN PROVISIONS OF THE 1985 GARBAGE COLLECTION AGREEMENT WERE NOT FOLLOWED

Our review revealed that the 1985 Garbage Collection Agreement between the City and WMI was not adhered to in the following matters:

- The commercial franchise fee rate has varied from 11.5 percent to 21.63 percent in spite of the fact that the 1985 Agreement specified 10.8 percent with no provision for modification;
- The City did not bill WMI for about \$3.7 million in increased costs for landfill capacity that the 1985 Agreement specified the City should bill; and

- WMI's statement of the computation of franchise fees accompanying their monthly payments of franchise fees omitted a required certification as to completeness and accuracy.

The 1985 Garbage Collection Agreement between the City and WMI provides separate rate structures for charging residential and commercial garbage producers.

The residential rate, or "service rate," is comprised of an amount paid to the garbage collector (called the Contractor's Payment) plus the City's franchise fee. The initial amounts of the Contractor's Payment are specified in the Agreement along with specific procedures for changing both the Contractor's Payment and the City's franchise fee.

For commercial garbage producers, the "service rate" is based on a table of "Commercial Collection Rates" in the 1985 Agreement plus a 10.8 percent franchise fee. Unlike the residential "service rate", there are no provisions in the 1985 Agreement to change the 10.8 percent franchise fee. However, our review revealed that from March 1986 through March 1990, commercial garbage producers paid about \$2 million in franchise fees that resulted from franchise fee rates that exceeded the specified 10.8 percent.

*The Commercial Franchise Fee Rate Has Varied
From 11.5 Percent To 21.63 Percent In Spite Of The Fact
That The 1985 Agreement Specified 10.8 Percent
With No Provision For Modification*

Municipal Code Section 9.08.1060 specifies that the commercial garbage collection franchise fee rate is 10.8 percent and that the City Council may modify the rate by approving a written contract. The 1985 Garbage Collection Agreement between the City and WMI is such a written contract. However, the Agreement--like the Municipal Code--specifies a commercial garbage collection franchise fee rate of 10.8 percent with no provision for modification.

Although both the Municipal Code and the 1985 Agreement specify a commercial franchise fee rate of 10.8 percent, that rate has never been used. Instead, the City instructed WMI to use 11.5 percent as the initial rate. Subsequently, the City has instructed WMI to use rates of 14 percent, 13.17 percent, and 21.63 percent. The First Amendment, which the City Council approved in April 1990, changed the specified 10.8 percent to “A percentage” to be set from time to time by the City Council. As a result, from March 1986 (the beginning of operations under the 1985 Garbage Collection Agreement) through April 1990 (when the First Amendment changed the commercial franchise fee provision), commercial garbage producers paid about \$2 million more in franchise fees than the 10.8 percent specified in the 1985 Agreement allowed.

During our review, we noted that in 1986 WMI requested certain revisions to the Garbage Collection Agreement to conform to actual practices including the commercial franchise fee rate. In an August 20, 1986 letter to OEM, WMI stated in part:

“Pursuant to discussions . . . following is a list of items in the contract that need modification. . . . Franchise Fees - These should be changed to reflect the actual percentage levied, residential at 22.2% and commercial at 11.5%. . . . Since these changes were made some time ago in practice, the contract language needs to be modified accordingly. . . .”

In January 1987, the City Attorney prepared a preliminary draft of amendments to the Garbage Collection Agreement and forwarded that draft to the Solid Waste Program Manager. In a letter dated January 21, 1987 to the Solid Waste Program Manager, the City Attorney stated in part:

“. . . The revision to Section 9.01.01 would reflect the 11.5% [commercial] franchise fee but would have to be amended again to reflect the 14% you have proposed to the Environment Committee. There should be some way to word this so we don't get caught having to amend this each time the franchise fee changes. . . .”

In April 1990, the City Council passed the First Amendment to the Agreement. Included in the First Amendment was the following change related to the commercial franchise fee rate:

“. . . Contractor shall pay to the City of San José . . . a franchise fee equal to . . .

A percentage of gross receipts derived from services rendered to Commercial Premises and to Multiple-Unit Dwelling Premises, such percentage to be set from time to time by the City Council . . . [Emphasis added].”

It should be noted that while the commercial franchise fee rate provision in the Agreement was amended to reflect actual practices, that amendment occurred three and one-half years after the City Attorney prepared the preliminary amendment.

According to Solid Waste Program personnel, they were too busy with operational and other contract related matters to process the

contract amendment any sooner. Further, according to the City Attorney's Office, such written contract amendments, while advisable, were not required in this particular instance. Specifically, the City Attorney's Office contends that, the Municipal Code and specific contract language notwithstanding, subsequent actions by the City and WMI effectively modified the Agreement provision pertaining to the garbage collection commercial franchise fee. (See APPENDIX B)

*The City Did Not Bill WMI For About \$3.7 Million
In Increased Costs For Landfill Capacity That
The 1985 Agreement Specified The City Should Bill*

In August 1985, the City entered into a 30-year agreement with International Disposal Corporation (IDC) to supply the City with landfill capacity to be used for garbage and certain other specified uses. This disposal agreement provides that the City may allocate its landfill capacity to other parties who actually haul the garbage to the landfill site. In September 1985, the City entered into an agreement with WMI for the collection of garbage. That agreement with WMI includes provisions for the City to allocate its landfill capacity available under the agreement with IDC to WMI. The WMI Agreement requires WMI to pay the City for the landfill capacity allocated to WMI at the same rate the City pays IDC for that landfill capacity, including any rate increase.

Sections 9.02.01 and 9.02.02 of the 1985 Agreement states the following with regard to disposal fees:

“Contractor shall pay to the City of San José for the privilege of disposal . . . an annual disposal fee calculated by multiplying the Designated Amount by the disposal fee per ton as set forth in the Disposal Agreement . . . It is understood that the Disposal Agreement (SIC) provides for an annual adjustment of disposal fees on July 1 of each calendar year. City shall notify Contractor of the new disposal fees as soon as practical after the determination of the adjustment of

disposal fees pursuant to the Disposal Agreement. Contractor shall pay for disposal of the Designated Amount at the adjusted rate beginning with the July monthly payment in each Contract Year and for each month thereafter until notified by City of the next disposal fee adjustment. This cost shall be included in the determination of Service Rates by City."

However, our review revealed that the City did not bill WMI for about \$3.7 million in increased costs for landfill capacity that the 1985 Agreement specified the City should bill. The following summary presents the City payments made to IDC for landfill capacity and the City receipts from WMI for the periods indicated:

TABLE II
SUMMARY OF CITY-PAID
DISPOSAL (LANDFILL) FEES
TO IDC AND CITY RECEIPTS FROM WMI
FROM MARCH 1986 THROUGH MARCH 1990

<u>Periods From March 1986 Through March 1990</u>	<u>City Payments To IDC For Landfill Capacity</u>	<u>City Receipts From WMI To Use The City's Landfill Capacity</u>
4 months ended June 30, 1986	\$849,038.68	\$849,051.72
12 months ended June 30, 1987	3,121,260.93	3,121,267.56
12 months ended June 30, 1988	4,643,600.04	3,173,456.04
12 months ended June 30, 1989	3,767,882.51	3,173,456.04
9 months ended March 31, 1990	<u>4,014,203.37</u>	<u>2,380,092.03</u>
TOTALS	<u>\$16,395,985.53</u>	<u>\$12,697,323.39</u>

Source: Office of Environmental Management and Finance Department records.

As is shown above, even though the 1985 Agreement specifies that WMI should pay to the City what the City pays to IDC for landfill capacity, from March 1986 through March 1990, the City paid IDC \$3,698,662.14 more than it billed and collected from WMI.

According to Integrated Waste Management Program personnel, the City made a conscious decision to not follow the 1985

Agreement provision that required WMI to pay for landfill capacity at the same rate the City paid IDC. Instead, the City opted to implement a conceptually complex system to collect the amount of the landfill capacity rate increases by increasing various fees such as garbage franchise fees, rubbish franchise fees, disposal fees, and business tax on landfills.

In April 1990, the City Council passed the First Amendment to the Agreement. The First Amendment changed Sections 9.02.01 and 9.02.02 to read as follows:

“Contractor shall pay to the City of San José for the privilege of disposal . . . an annual disposal fee calculated by multiplying the Designated Amount by Eight Dollars and Three Cents (\$8.03) per ton . . . It is understood that the Disposal Agreement provides for an annual adjustment of disposal fees on July 1 of each calendar year. In the event that the Unit Price for disposal is increased as provided in the Disposal Agreement, and City elects to adjust the disposal fee payable by Contractor pursuant to Section 9.02.01 of this agreement, then the Contractor’s Payment shall be increased as provided for in Section 7.03. Any such increase in the Contractor’s Payment will be in an amount sufficient to cover increases in disposal fees payable by Contractor for the Designated Amount of Refuse disposed of by Contractor at the Disposal Site. In addition, City may, at any time during the course of this agreement, direct Contractor to increase the Service Rates in an amount sufficient to cover increases in Disposal Fees pursuant to the Disposal Agreement and sufficient to cover any corresponding increase in the City’s franchise fee.”

As a result of the new language in Section 9.02.01, the City’s contract with WMI regarding disposal fees now coincides with actual practices, and the noncompliance issue that existed from July 1987 through March 1990 ceased.

*WMI’s Statement Of The Computation Of Franchise Fees
Accompanying Their Monthly Payments Of Franchise Fees Omitted
A Required Certification As To Completeness And Accuracy*

Section 9.01.02 of the 1985 Garbage Collection Agreement between the City and WMI requires that WMI’s monthly payments of

franchise fees be accompanied by a statement showing WMI's gross receipts subject to franchise fees and the computations of the franchise fees due. Municipal Code Section 9.08.1060C and Agreement Section 9.01.02 also require that each statement include a certification of completeness and accuracy that an authorized officer of WMI has signed. The exact wording of the certification specifies that the signer is subject to penalties for perjury. However, no certifications were included with WMI's monthly remittances since the beginning of operations under this Agreement in March 1986 until we noted the omission in April 1990. That period covers four years and includes over \$20 million in franchise fee remittances. According to OEM, the Finance Department recently obtained a blanket retroactive certification for the period stated above. In addition, OEM is currently developing procedures to assure that the monthly statements will include the required certification.

THE 1985 GARBAGE COLLECTION AGREEMENT IS INACCURATE, INCOMPLETE, AND SUBJECT TO MISINTERPRETATIONS

The 1985 Garbage Collection Agreement between the City and WMI produced the following situations:

- The 1985 Agreement and the First Amendment to the Agreement contains ambiguous language regarding Commercial Collection Rates;
- The formula for Contractor's Payment in the 1985 Agreement was unintelligible, but changes to the Contractor's Payment were made anyway; and

- The City allowed WMI to repurchase the landfill capacity it lost because of the City's recycling programs even though the 1985 Agreement did not provide for such repurchases.

*The 1985 Agreement And The First Amendment
To The Agreement Contains Ambiguous Language
Regarding Commercial Collection Rates*

As was noted earlier, for commercial garbage producers, the "service rate" is based on a table of Commercial Collection Rates in the 1985 Agreement plus a 10.8 percent franchise fee. However, our review of the 1985 Agreement and the First Amendment to the Agreement revealed that it is not as clear as it should be that the City can change Commercial Collection Rates the same as it changes Residential Rates.

The ambiguity regarding Commercial Collection Rates arises from the fact that several terms in the 1985 Agreement and the First Amendment to the Agreement are used interchangeably. Specifically, at various places in the Agreement and the First Amendment to the Agreement the following terms regarding Commercial Collection Rates appear to be used interchangeably: "Contractor's Payment," "Standard Monthly Payments," and "Commercial Collection Rates." The problem with this situation is that while it appears clear that "Contractor's Payments" are subject to annual increases, it is not clear that "Standard Monthly Payments" or "Commercial Collection Rates" are subject to change. Further, unless one assumes that "Contractor's Payments" and "Commercial Collection Rates" are one and the same thing, then WMI appears to have overcharged commercial garbage producers about \$1.5 million between March 1986 and April 1990.

It should be noted that, when the Director of OEM responded to the City Auditor regarding this issue, she stated in part that “. . . By associative logic then, the Commercial Collection Rates are also Contractor’s Payments . . . [Emphasis added].” In our opinion, one should not have to use “associative logic” to conclude that WMI can change Commercial Collection Rates. By adding explicit language in its Agreement with WMI, the City can clarify the City’s ability to increase Commercial Collection Rates.

*The Formula For Contractor’s Payment
In The 1985 Agreement Was Unintelligible,
But Changes To The Contractor’s Payment Were Made Anyway*

The 1985 Garbage Collection Agreement between the City and WMI provides for WMI to receive and retain monies for their services. Such monies are defined as Contractor’s Payment. The Agreement also contains a formula for calculating changes in the amount of Contractor’s Payment based upon changes in specified price indices. As stated in the 1985 Agreement, because of a typographical error, the formula for calculating changes in the amount of Contractor’s Payment is unintelligible and literally unusable. As a result, from March 1986 to April 1990, there was a problem with the formula. The City used the correct, albeit different, formula to calculate changes to the Contractor’s Payment. This situation was formally remedied when in April 1990, the City Council passed the First Amendment to the Agreement which corrected the formula so that it now makes sense.

The City Allowed WMI To Repurchase The Landfill Capacity It Lost Because Of The City's Recycling Programs Even Though The 1985 Agreement Did Not Provide For Such Repurchases

As was noted earlier, the City pays a landfill operator (IDC) for landfill capacity and allocates its capacity to the garbage collector (WMI), who pays the City for the allocated capacity. An additional provision of the 1985 Garbage Collection Agreement requires the collector to rebate landfill capacity to the City on a ton-for-ton basis for any City recycling programs. In other words, for every ton of material the City's recycling programs process, WMI's allocated landfill capacity is reduced on a ton-for-ton basis, even though WMI had paid for the total allocation. Specifically, Section 3.02.03 of the 1985 Agreement states:

"In the event that any City sponsored, operated, or controlled Waste Reduction Program reduces the annual amount of Refuse requiring disposal under this agreement, then the Designated Amounts of Refuse disposal capacity provided by City at the disposal fees indicated in Section 9.02 of this Agreement shall be reduced on a ton for ton basis for each ton of recycled materials documented by the City to have been collected by such Waste Reduction Programs. Contractor shall continue to pay to City the disposal fees indicated in Section 9.02."

The 1985 Agreement makes no provision for WMI to recoup the landfill capacity it loses because of the City's recycling programs. However, that lack of formal agreement notwithstanding, in October 1988, the Office of Environmental Management (OEM) recommended to the City Council's Environment Committee that WMI be allowed to essentially repurchase the 26,814 tons of landfill capacity they lost because of the City's recycling programs from March 1986 through June 1988.

In addition to the 1985 Agreement not providing for WMI to repurchase landfill capacity, OEM's recommendation to the

Environment Committee to allow for such repurchase is significant for another reason. Specifically, after the City amended its Agreement with WMI in April 1990, there still is no written agreement covering the issue of WMI repurchasing landfill capacity in future periods. As a result, the City may encounter the same difficulties in negotiating a future landfill repurchase agreement with WMI that it did when negotiating the October 1988 Agreement.

It should be noted that as of January 1991, WMI and the City have not been able to agree on the amount WMI owes for repurchased landfill capacity in 1989-90. According to OEM officials, WMI should pay the City \$287,950 for repurchased landfill capacity in 1989-90. However, six months after the end of 1989-90, OEM and WMI are still trying to negotiate a settlement. In our opinion, this situation further evidences the need for a written agreement between the City and WMI regarding repurchasing landfill capacity.

THERE IS A LACK OF ADMINISTRATIVE CONTROLS OVER THE WMI GARBAGE COLLECTION AGREEMENT

During our review, we noted the following errors and deficiencies in administrative controls over the WMI Garbage Collection Agreement:

- Errors in the rate adjustment process were not corrected;
- No City controls exist to ensure that WMI bills garbage producers at the same rates the City approved; and
- The City has not received timely, independent CPA reports on WMI's franchise fees and has not determined how to use the reports when it does receive them.

Errors In The Rate Adjustment Process Were Not Corrected

We reviewed the garbage collection rate adjustment process for those rates beginning July 1, 1990. Described below are the steps in the rate adjustment process and the points we noted.

Per the 1985 Garbage Collection Agreement, WMI starts the rate adjustment process by submitting a Service Rate Adjustment Statement. Basically, this statement uses the changes in two specified price indices in a specified formula to produce a percentage by which the amounts to be paid to WMI for their services are to be increased or decreased. We noted two issues regarding OEM's checking of these rates. The first issue was that the value of a similarly titled, but different index, was mistakenly used. Use of this wrong index value would have increased the payments to WMI except that the change in the other index already exceeded the maximum yearly increase. It should be noted that OEM apparently caught this error but did not require WMI to correct it. The second issue was that the maximum yearly increase limit was incorrectly calculated. As a result, WMI was allowed to use rates that would have generated an estimated \$70,000 more than the 1985 Agreement allowed. When we told OEM of this mistake, they told us that it would be corrected.

Next, we noted that the 1985 Garbage Collection Agreement states that *"Upon receipt of an accurate and correctly calculated Service Rate Adjustment Statement, City shall determine the new Service Rates to be billed to producers and shall notify contractor of such Service Rates ..."* The 1985 Agreement places no rules or limits regarding the City's setting of rates to be charged. We found that rather than the City calculating all the new rates to be billed, the City supplied WMI with a new rate for the basic residential service and a

new rate for a theoretical average cubic yard of commercial service. WMI then compared these two new numbers to the previous year's numbers in order to calculate percentage changes, which were then applied to the previous year's rate tables to produce new rate tables. After WMI produced the new billing rate tables for July 1990, they sent the tables to OEM for checking and approval. According to OEM officials, a member of the OEM Administrative Unit was to have checked the billing rates. However, we found that an OEM Integrated Waste Program employee had actually performed the review. Further, because this employee was unfamiliar with the rate setting process, he resorted to contacting other WMI and Neighborhood Preservation Department employees in order to learn how to check the billing rate tables WMI submitted. Finally, we noted that the final rate checking was done on WMI-produced rate tables which were partially illegible. While OEM's checker caught the larger errors in WMI's proposed billing rate tables, some small errors went undetected. For example, for residential users, 1 of the 13 rates was incorrect on WMI's final rate table and 2 of the 165 commercial rates were incorrect. It should be noted that the City has no documentation regarding how billing rates are to be calculated. Therefore, we had to rely on the same methodology the OEM employee used when he did the checking. As was noted earlier, the OEM employee had to contact other WMI and Neighborhood Preservation Department employees in order to learn how to check the billing rate calculations. Thus, we cannot be sure that the methodology OEM used to check the billing rates for July 1990, and that we replicated during our audit, was the correct one.

No City Controls Exist To Ensure That WMI Bills Garbage Producers At The Same Rates The City Approved

After OEM has completed its checking of the billing rate tables, WMI is supposed to use them to bill its customers. However, the City does not check to see that the rates WMI bills for garbage collection are the same as the rates approved. Our review of WMI's billing rates revealed one difference from OEM's authorized rates. Our observed difference was only one cent per quarter. While this difference is very small, it does in our opinion evidence that WMI can use a wrong billing rate and that OEM needs to check approved to actual billing rates for compliance.

The City Has Not Received Timely, Independent CPA Reports On WMI's Franchise Fees And Has Not Determined How To Use The Reports When It Does Receive Them

The 1985 Garbage Collection Agreement between the City and WMI requires that WMI supply the City with an annual, special, independent CPA report of WMI's gross receipts and the related franchise fees payable to the City. This report is to be filed with the City within 120 days after the close of WMI's fiscal year. Our review revealed that this report was two years late for 1986, one year late for 1987, and five days late for 1988. The City received the 1989 report exactly on the date due.

Further, the 1985 Agreement specifies that WMI should send copies of the annual, special, independent CPA report to four different City organizations. We found that the City has no plans or procedure in place to let these four organizations know what to do with these reports when they get them. Thus, there is no assurance that the City will perform any control procedures with these reports or that any procedures that are performed will be adequate.

Finally, we noted that the independent CPA's special report is not forwarded directly to the City. Instead, the CPA gives the report to WMI which, in turn, forwards the report to the City. Thus, the effectiveness of the report as an independent check on WMI is potentially impaired because WMI handles the report before sending it to the City.

CONCLUSION

Our review revealed that:

- Certain provisions of the 1985 Garbage Collection Agreement were not followed;
- The 1985 Garbage Collection Agreement is inaccurate, incomplete, subject to misinterpretations; and
- There is a lack of administrative controls over the WMI Garbage Collection Agreement.

As the lead organization, the Office of Environmental Management should take action to conform its agreements with actual practice, enforce adherence, and effectively administer those agreements.

RECOMMENDATIONS

We recommend that the Office of Environmental Management:

Recommendation #1:

Institute procedures to assure compliance with City Code and/or WMI Garbage Collection Agreement requirements regarding franchise fees and landfill capacity costs. (Priority 2)

Recommendation #2:

Develop procedures to assure that WMI's statements accompanying their monthly franchise fee remittances contain the required certification and are otherwise in accordance with the requirements of the Agreement with WMI. (Priority 2)

Recommendation #3:

Finalize into a written agreement for Environment Committee and City Council approval the terms for allowing WMI to repurchase the landfill capacity it loses because of City recycling programs. (Priority 1)

Recommendation #4:

Work with the Office of the City Attorney to add explicit language to the Agreement with WMI to clarify the City's ability to change Commercial Collection Rates. (Priority 2)

Recommendation #5:

Formalize and document the process of checking WMI's Service Rate Adjustment Statements, including any supervisory review. (Priority 3)

Recommendation #6:

Finalize the process for checking proposed billing rates for garbage services. This process should include any standardized forms necessary to document that all review points were covered, who performed each review, and who verified that the review was performed accurately. (Priority 3)

Recommendation #7:

Document how Service Rate Adjustment Statements and the residential, commercial, and miscellaneous billing rates are to be calculated with particular emphasis on rounding rates up or down. (Priority 2)

Recommendation #8:

Check the garbage collection rates WMI actually uses to bill customers to assure that those rates are the same rates that the City approved. (Priority 2)

Recommendation #9:

Establish controls to ensure that the City receives, in a timely manner, the annual, special, independent CPA report on WMI garbage collection cash receipts and franchise fees. (Priority 3)

Recommendation #10:

Establish which City departments should receive the annual, special, independent CPA report on WMI garbage collection cash receipts and franchise fees and what those departments should do with the report when they receive it. (Priority 3)

Recommendation #11:

Instruct WMI to have the independent CPAs forward directly to the City their annual, special, report on WMI garbage collection cash receipts and franchise fees. (Priority 2)

Click On The Appropriate Box To View Item

